

SETH TOWLE

(Appellant)

v.

KRIS-WAY TRUCK LEASING

(Appellee)

and

HRH CLAIMS MANAGEMENT SERVICES

(Insurer)

Decided: December 11, 2013
Conferenced: November 20, 2013

Panel Members: Hearing Officers Knopf, Goodnough, and Stovall
By: Hearing Officer Goodnough

[¶1] Seth Towle appeals from a decision of a Workers' Compensation Board hearing officer (*Elwin, HO*) determining that the calculation of his partial incapacity benefit includes his pre-injury fringe benefits as part of the pre-injury average weekly wage, pursuant to the plain language of 39-A M.R.S.A. § 102 (4)(H) (Supp. 2012) and *Coulombe v. Anthem Blue Cross/Blue Shield of Me., Inc.*, 2002 ME 163, ¶ 11, 809 A.2d 613. He contends that because there were no post-injury fringe benefits to add to the imputed post-injury earning capacity, it was improper for the hearing officer to have added actual pre-injury fringe benefits to the pre-injury average weekly wage. Rather, Mr. Towle argues that the pre-injury fringe benefits should have been added *post hoc* to the partial compensation rate initially calculated without reference to fringe benefits. We disagree.

[¶2] The hearing officer's interpretation and application of section 102 (4)(H) to the facts in this case were correct and consistent with *Coulombe*. The hearing officer neither misconceived the law nor applied the law in an arbitrary manner. *See Gushee v. Point Sebago*, Me. W.C.B. No. 13-1, ¶ 6 (App. Div. 2013).

The entry is:

The hearing officer's decision is affirmed.

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322 (Supp. 2012).

Attorneys for Appellant:
James J. MacAdam, Esq.
Nathan A. Jury, Esq.
David E. Hirtle, Esq.
MacAdam Jury, P.A.
208 Fore Street
Portland, ME 04101

Attorneys for Appellee:
Cara L. Biddings, Esq.
Thomas Quartararo, Esq.
Robinson, Kriger & McCallum
12 Portland Pier
Portland, ME 04101